



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/173182

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (hereinafter “the agency”) in regard to Medical Assistance (MA), a telephonic hearing was held on April 19, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly modified petitioner’s prior authorization (PA) request for Speech Language Therapy (SLT).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By written submittal of: [REDACTED], MA CCC-SLP
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County and is certified for MA.
2. At the time of the PA request he was 4 years old.
3. Petitioner is diagnosed with diplegic cerebral palsy and cognitive communication deficit.
4. On January 5, 2016 the petitioner's private Speech Language Therapist at [REDACTED] submitted a PA request to the agency for SLT twice weekly for 6 weeks beginning January 4, 2016.
5. Petitioner has received SLT from [REDACTED] since January 2013 and has been previously approved for 132 SLT visits.
6. Petitioner is home-schooled.
7. On February 24, 2016 the agency issued a notice to petitioner modifying the PA request because it concluded that the SLT regimen requested was not medically necessary under Wisconsin's MA rules at the level of service requested. The PA was modified to allow for 2 monthly visits in order to assist caregivers with a home exercise program (HEP) and carryover.

DISCUSSION

Speech therapy is covered by MA under Wis. Admin. Code, §DHS 107.18. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.18(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6.

In reviewing a PA request the agency must consider the general PA criteria found at Wis. Admin. Code, §DHS 107.02(3) and the definition of "medical necessity" found at Wis. Admin. Code, §DHS 101.03(96m). "Medically necessary" means a medical assistance service under [Chapter DHS 107](#) that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with [s. DHS 107.035](#), is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family or a provider;

8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code §DHS 101.03(96m).

The agency interprets the Code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

The agency argues that the provider has not established that SLT is medically necessary for the petitioner at the level of twice per week. The agency determined that a HEP was the most appropriate level of service for this child. This was due to the slow progress that petitioner has made since beginning SLT in 2013 with the same goals, and I assume the amount of time allowed for the HEP was given because the changes that petitioner will make through a HEP are not expected to be so rapid that a therapist is needed to adjust the HEP on a weekly basis.

At hearing, I heard a parent and therapy provider who understandably desire to give petitioner the absolute best treatment possible. Petitioner's mother argued that the slow pace of improvement was attributable to the PA process on a previous PA, which somehow caused petitioner to only be seen 20 times in the past year. This contradicts the information submitted by the provider whose progress notes indicate he was seen 1-2 times per week. Regardless, even if mom's version is correct, it doesn't explain the past 3 years of SLT, with the active home carryover described, and the relatively slow progress he made on his goals. Additionally, the therapist and mom described that the provider's professional services are needed because mom does not possess the same skills. They also testified to petitioner's mother home-schooling him, which does not provide SLT as he might receive through public education. After the three years of service, and described participation of family in carryover, the family should be familiar with the exercises already prescribed, and the allowed time can be used to structure a HEP going forward.

Additionally, the mere assertion, even of a doctor or clinician, that a person needs a specific service is not the same thing as demonstrating with factual and clinical evidence that the item meets these criteria to establish it is medically necessary. While I do not in any way mean to minimize the severity of petitioner's impairments, such blanket statements do not establish the medical need for the proposed level of service under MA. In the end, the MA program cannot provide the best treatment; by law it can cover only necessary treatment. My overall impression of the pace of the petitioner's improvement is such that the HEP is adequate to meet petitioner's needs at this time. Under the circumstances, I cannot find that the agency's action in modifying the prior authorization request was inappropriate.

The private SLT provider can always submit a new or amended PA if the allowed visits are not sufficient and has the documentation to support the request.

CONCLUSIONS OF LAW

The agency correctly modified petitioner's PA request for SLT.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

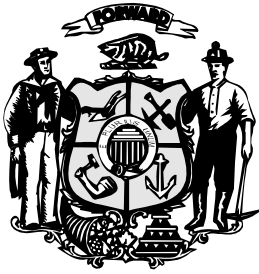
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of May, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 25, 2016.

Division of Health Care Access and Accountability